

HOUSE No. 1281

The Commonwealth of Massachusetts

PRESENTED BY:

John J. Binienda

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act providing for the civil liability of drug dealers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
John J. Binienda	17th Worcester
John P. Fresolo	16th Worcester

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1321 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT PROVIDING FOR THE CIVIL LIABILITY OF DRUG DEALERS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The General Laws, as appearing in the 2006 Official Edition, are hereby amended by inserting after Chapter 94F the following new chapter:—

CHAPTER 94G.

DRUG DEALER LIABILITY.

Section 1. As used in this chapter, the following terms shall have the following meanings:

(a) “Marketing of controlled dangerous substances”, the illegal distributing, dispensing, or possessing with intent to distribute a specific controlled dangerous substance.

(b) “Individual user of the controlled dangerous substance”, the individual whose illegal use of a specified controlled dangerous substance is the basis of an action brought under this chapter.

(c) “Level I Offense”:

(1) Possessing with intent to distribute less than four ounces of a specified controlled dangerous substance as defined in this section;

(2) Distributing or dispensing less than one ounce of a specified controlled dangerous substance as defined in this section;

(3) Possessing with intent to distribute 25 or more but less than 50 marijuana plants;

(4) Possessing with intent to distribute less than four pounds of marijuana; or

(5) Distributing or dispensing more than 28.5 grams of marijuana.

(d) “Level 2 Offense”:

(1) Possessing with intent to distribute four ounces or more but less than eight ounces of a specified controlled dangerous substance as defined in this section;

(2) Distributing or dispensing one ounce or more but less than two ounces of a specified controlled dangerous substance as defined in this section;

(3) Possessing with intent to distribute 50 or more but less than 75 marijuana plants;

(4) Possessing with intent to distribute four pounds or more but less than 8 pounds of marijuana; or

(5) Distributing or dispensing more than one pound but less than five pounds of marijuana.

(e) “Level 3 Offense”:

(1) Possessing with intent to distribute eight ounces or more but less than 16 ounces of a specified controlled dangerous substance as defined in this section;

(2) Distributing or dispensing two ounces or more but less than four ounces of a specified controlled dangerous substance as defined in this section;

(3) Possessing with intent to distribute 75 or more but less than 100 marijuana plants.

(4) Possessing with intent to distribute eight pounds or more but less than 16 pounds of marijuana, or

(5) Distributing or dispensing more than five pounds but less than ten pounds of marijuana.

(f) “Level 4 Offense”:

(1) Possessing with intent to distribute 16 ounces or more of a specified controlled dangerous substance as defined in this section;

(2) Distributing or dispensing four ounces or more of a specified controlled dangerous substance as defined in this section;

(3) Possessing with intent to distribute 100 or more marijuana plants;

(4) Possessing with intent to distribute 16 pounds or more of marijuana or

(5) Distributing or dispensing more than ten pounds of marijuana.

(g) “Person” means an individual, governmental entity, sole proprietorship, corporation, limited liability company, firm, trust, partnership, or incorporated or unincorporated association, existing under or authorized by the laws of this state, another state, or a foreign country.

(h) “Participate in the illegal marketing of controlled dangerous substances”, means to transport, import into the Commonwealth, distribute, dispense, sell, possess with intent to distribute, or offer to distribute a controlled dangerous substance, in violation of any of the provisions of chapter 94C. “Participate in the marketing of controlled dangerous substances” does not include the purchase or receipt of a controlled dangerous substance for a personal use only.

(i) “Period of illegal use”, means, in relation to the individual use of a specified controlled dangerous substance, the time of the individual’s first illegal use of a controlled dangerous substance to the accrual of the cause of action.

(j) “Place of illegal activity”, means, in relation to the individual user of a specified controlled dangerous substance, each county in which the individual illegally possesses or uses a specified controlled dangerous substance.

(k) “Place of participation”, means, in relation to a defendant in an action brought under this chapter, each county in which the defendant participates in the marketing of controlled dangerous substances.

(l) “Specified controlled dangerous substance”, means heroin, cocaine, lysergic acid, diethylamide, phencyclidine, methamphetamine, phenyl-2-propanoic (P2P) and any other controlled dangerous substance specified under the provisions of chapter 94C as being unlawful to manufacture, distribute, or dispense, or to possess or have under a person’s control with intent to manufacture, distribute, or dispense.

Section 2. A person who knowingly participates in the illegal marketing of controlled dangerous substances within the Commonwealth is liable for damages, as provided in this chapter, for injury resulting from an individual’s illegal use of a controlled dangerous substance.

Section 3. (a) Any of the following persons may bring an action for damages caused by an individual’s illegal use of a controlled dangerous substance:

(1) A parent, legal guardian, child, spouse, or sibling of the controlled dangerous substance user.

(2) An individual who was exposed to a controlled dangerous substance in utero.

(3) An employer of the controlled dangerous substance user.

(4) A medical facility, insurer, governmental entity, employer, or other entity that funds a

84 drug treatment program or employee assistance program for the controlled dangerous substance
85 user or that otherwise expends money on behalf of the controlled dangerous substance user.

86 (5) A person injured as a result of the willful, reckless, or negligent actions of an
87 individual user of an illegal controlled substance.

88 (b) A person entitled to bring action under this chapter may seek damages against:

89 (1) A person who distributed or dispensed a controlled dangerous substance to the
90 individual user of the controlled dangerous substance; or

91 (2) A person who knowingly participated in the marketing of controlled dangerous
92 substances, if all of the following apply:

93 (a) The defendant's place of participation is situated in the same county as the individual
94 user's place of illegal activity;

95 (b) The defendant participated in the marketing of the same type of controlled dangerous
96 substances as those used by the individual user;

97 (c) The defendant was previously convicted of an offense in the Commonwealth for that
98 type of controlled dangerous substance; and

99 (d) The defendant participated in the marketing of controlled dangerous substances at any
100 time during the period the individual user unlawfully used the controlled dangerous substance.

101 (e) A person entitled to bring an action under this section may recover all of the following
102 damages:

103 (1) Economic damages, including, but not limited to, the cost of treatment, rehabilitation
104 and medical expenses, loss of economic or educational potential, loss of productivity,
105 absenteeism, support expenses, accidents or injury, and any other pecuniary loss proximately
106 caused by the use of a controlled dangerous substance.

(2) Noneconomic damages, including, but not limited to, physical and emotional pain, suffering, physical impairment, emotional distress, disfigurement, loss of enjoyment, loss of companionship, services and consortium, and other nonpecuniary losses proximately caused by an individual's use of a controlled dangerous substance.

(3) Punitive damages.

(4) Reasonable attorney fees.

(5) Costs of suit, including, but not limited to, reasonable expenses for expert testimony.

Section 4. (a) An individual user of a controlled dangerous substance may bring an action for damages caused by the use of a controlled dangerous substance only if all of the following conditions are met:

(1) At least six months before filing an action, the individual personally discloses to law enforcement authorities all of the information known to the individual regarding all that individual's sources of controlled dangerous substances.

(2) The individual does not use a controlled dangerous substance within the six months immediately preceding the date the user files the action.

(3) The individual continues to remain free of the use of all illegal controlled dangerous substances throughout the pendency of the action.

(b) An individual user entitled to bring an action under this section may seek damages only from a person who transported, imported into this state, distributed, dispensed, sold, possessed with intent to distribute, or offered to distribute, in violation of any of the provisions of chapter 94C, the controlled dangerous substance actually used by the individual user of a controlled dangerous substance.

(c) An individual user entitled to bring an action under this section may recover only the following damages:

(1) Economic damages, including, but not limited to, the cost of treatment, rehabilitation and medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, accidents or injury, and any other pecuniary loss proximately caused by the person's use of a controlled dangerous substance.

(2) Reasonable attorney fees.

(3) Costs of suit, including, but not limited to, reasonable expenses for expert testimony.

Section 5. (a) A third party shall not pay damages awarded under this act, or provide a defense or money for a defense, on behalf of an insured under a contract of insurance or indemnification.

(b) A cause of action authorized pursuant to this chapter may not be assigned, either expressly, by subrogation, or by any other means, directly or indirectly, to any public or publicly funded agency or institution.

Section 6. A person whose participation in the marketing of controlled dangerous substances is grounds for liability pursuant to this act shall be rebuttably presumed to be liable for damages incurred by the plaintiff in the following percentages:

(a) For a level 1 offense, 25 percent of the damages;

(b) For a level 2 offense, 50 percent of the damages;

(c) For a level 3 offense, 75 percent of the damages; and

(d) For a level 4 offense, 100 percent of the damages.

151 Section 7. (a) Two or more persons may join in one action under this act as
152 plaintiffs if their respective actions have at least one market for controlled dangerous substances
153 in common and if any portion of the period of use of a controlled dangerous substance overlaps
154 with the period of use of a controlled dangerous substance for every other plaintiff.

155 (b) Two or more persons may be joined in one action under this chapter as defendants if
156 those persons are liable to at least one plaintiff.

157 Section 8. (a) An action by an individual user of a controlled dangerous substance
158 is governed by the principles of comparative responsibility. Comparative responsibility attributed
159 to an individual user does not bar the user's recovery but diminishes the award of damages
160 proportionately, according to the measure of responsibility attributed to the user. The burden of
161 proving comparative responsibility is on the defendant, who shall prove comparative
162 responsibility by clear and convincing evidence.

163 (b) Comparative responsibility shall not be attributed to a plaintiff who is not an
164 individual user of a controlled substance.

165 Section 9. A person subject to liability under this chapter has a right of action for
166 contribution against another person subject to liability under this chapter. Contribution may be
167 enforced either in the original action or by a separate action brought for that purpose. A plaintiff
168 may seek recovery in accordance with this chapter and other laws against a person whom a
169 defendant has asserted a right of contribution.

170 Section 10. (a) Proof of liability in an action brought under this chapter shall be
171 shown by clear and convincing evidence.

172 (b) A person against whom recovery is sought who has been convicted of a
173 violation of chapter 94C, manufacturing, distributing or dispensing, or an equivalent offense

under federal law or the law of any other state, is estopped from, denying illegal participation in the market for controlled dangerous substances. If such conviction was based upon the same type of controlled dangerous substance as that used by the individual user, the conviction also constitutes prima facie evidence of the person's participation in the marketing of controlled dangerous substances pursuant to this chapter.

(c) The absence of a criminal conviction of a person for a violation of chapter 94C or an equivalent offense under federal law or the law of any other state does not bar an action against that person by a plaintiff bringing suit pursuant to this chapter.

Section 11. (a) A cause of action accrues under this act when a person has reason to know of the harm from use of a controlled dangerous substance that is the basis for the cause of action and has reason to know that the use of a controlled dangerous substance is the cause of the harm.

(b) A claim under this chapter shall not be brought more than three years after the defendant distributes, dispenses, or possesses, or sells the controlled dangerous substance and after the defendant is convicted of a crime involving controlled dangerous substances, whichever is the later.

Section 12. (a) The district attorney's office or the attorney general's office may represent the state or a political subdivision of the state in an action brought under this act.

(b) On motion by a governmental agency involved in an investigation or prosecution involving a controlled dangerous substance, an action brought under this act shall be stayed until the completion of any underlying criminal investigation or prosecution.

(c) An action shall not be brought under this chapter against a law enforcement officer or agency, or a person acting in good faith at the direction of a law enforcement officer or agency,

197 for participation in illegal marketing of a controlled substance if that participation is in
198 furtherance of an official investigation.

199 SECTION 2. No cause of action shall arise based on any act by a defendant which
200 occurred prior the effective date of this chapter